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04-26-04

PHA 4166.5 (2805/5)  
PATENT

EPAF  
X621

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Alan E. Moorman et al.  
Serial No. 09/885,221  
Filed June 20, 2001  
Confirmation No. 3271  
For METHOD OF USING (H+/K+) ATPase INHIBITORS AS ANTIVIRAL AGENTS  
Examiner Shailendra - Kumar

Art Unit 1621

April 23, 2004

**NOTICE OF APPEAL FROM THE PRIMARY EXAMINER  
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS,  
SIR:

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the decision of the Examiner dated January 28, 2004, rejecting claims 1, 2, 22, 25, and 31-39.

The appeal fee of \$330.00 is submitted herewith.

If there are any additional charges in this matter, please charge our Deposit Account No. 19-1345.

Respectfully submitted,

Kathleen M. Petrillo, Reg No. 35,076  
SENNIGER, POWERS, LEAVITT & ROEDEL  
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KMP/axs/lam

Express Mail Label No. EV 416450618 US  
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### FEE TRANSMITTAL

Application Number 09/885,221  
Filing Date June 20, 2001  
Confirmation No. 3271  
Inventor(s) Alan E. Moorman et al.  
Group Art Unit 1621  
Examiner Name Shailendra - Kumar  
Attorney Docket Number PHA 4166.5 (2805/5)

#### METHOD OF PAYMENT

1.  The Commissioner is hereby authorized to charge the indicated fees to Deposit Account No. 19-1345.
- The Commissioner is hereby authorized to charge any additional fees required under 37 CFR 1.16 and 1.17 to Deposit Account No. 19-1345.
- Applicant claims small entity status.

2.  Check Enclosed. The Commissioner is hereby authorized to charge any under payment or credit any over payment to Deposit Account No. 19-1345.

#### FEE CALCULATION

1.  BASIC FILING FEE Subtotal (1) \$ \_\_\_\_\_  
(Type: \_\_\_\_\_)
2.  EXTRA CLAIM FEES Subtotal (2) \$ \_\_\_\_\_  
Total Claims \_\_\_\_\_  
Independent Claims \_\_\_\_\_  
Multiple Dependent Claims \_\_\_\_\_
3.  ADDITIONAL FEES Subtotal (3) \$ 330.00
  - Surcharge - late filing fee or oath
  - Surcharge - late provisional filing fee or cover sheet
  - Extension for reply within \_\_\_\_\_ month
  - Notice of Appeal
  - Filing a Brief in Support of an appeal
  - Request for ex parte Reexamination
  - Petitions to the Commissioner
  - Submission of Information Disclosure Statement
  - Recording each patent assignment per property
  - Request for Continued Examination
  - Other: \_\_\_\_\_

TOTAL AMOUNT OF PAYMENT \$ 330.00

  
\_\_\_\_\_  
Kathleen M. Petrillo, Reg. No. 35,076

April 23, 2004

Date

KMP/lam

Express Mail Label No. EV 416450618 US

## SEARCH REQUEST FORM

Requestor's Name: S. Kumar

Serial Number: 09/885291 (6569)  
08/659,098

Date: 10/21/98 Phone: 308-4519 Art Unit: 1621  
7A07

### Search Topic:

Please write a detailed statement of search topic. Describe specifically as possible the subject matter to be searched. Define any terms that may have a special meaning. Give examples or relevant citations, authors, keywords, etc., if known. For sequences, please attach a copy of the sequence. You may include a copy of the broadest and/or most relevant claim(s).

The method of using a H<sup>+</sup>/K<sup>+</sup> ATPase inhibitor to treat viral infection, said inhibitor comprising a sulfur bridge.

See claims 21-22 & 2-3

Moorman et al.

### STAFF USE ONLY

Date completed: 10-23-98

Searcher: Beverly

Terminal time: 31

Elapsed time: \_\_\_\_\_

CPU time: \_\_\_\_\_

Total time: 43

Number of Searches: \_\_\_\_\_

Number of Databases: 1

#### Search Site

STIC

CMEI

Pre-S

#### Type of Search

N.A. Sequence

A.A. Sequence

Structure

Bibliographic

#### Vendors

IG

STN

Dialog

APS

Geninfo

SDC

DARC/Questel

Other

**SUBJECT: DECISION ON TERMINAL DISCLAIMERS INFORMAL FORM**

DATE: 12-18-02

APPL. S.N.: 091885,221

TO EXAMINER: S. Kumar

ART UNIT: 1621

MOSE MONTGOMERY ROOM 11E18

MAILROOM DATE 12-6-02

AFTER FINAL YES NO NUMBER OF T.D(S). FILED 1

**INSTRUCTIONS:** I have reviewed the submitted T.D. with the results as set forth below. If you agree, please use the appropriate form paragraphs identified by this informal memo in your next office action to notify applicant about the T.D. If you disagree with my analysis or have questions at all about the acceptability of the T.D., please see me or our Special Program Examiner. THIS MEMO IS AN INFORMAL, INTERNAL MEMO ONLY. IT MUST NOT BE MAILED TO APPLICANT, NOR SHOULD A COPY BE IN LEFT IN FILE.

The T.D. is PROPER and has been recorded. (See 14.23).

The T.D. is NOT PROPER and has not been accepted for the reason(s) checked below. (See 14.24).

The recording fee of \$ \_\_\_\_\_ has not been submitted nor is there any pre authorization in the application file to charge to a deposit account. (See 14.26.07)

Application Examiner has not processed T.D. fee. (See fee authorization).

The T.D. does not satisfy Rule 321(b)(3) in that the person who has signed the T.D. has not stated his/her interest (and/or the extent of the interest of the business entity represented by the signature) in the application/patent. (See 14.26 and 14.26.01).

The T.D. lacks the enforceable only during the common ownership clause needed to overcome a double patenting rejection, Rule 321(c). (See 14.27, 14.27.01).

It is directed to a particular claims(s), which is not acceptable since "the disclaimer must be of a terminal portion of the term of the entire patent to be granted". MPEP 1490. (See 14.26, 14.26.02).

The person who signed the terminal disclaimer:

has failed to state his/her capacity to sign for the business entity, (See 14.28).

is not recognized as an officer of the assignee, (See 14.29 and possibly 14.29.01).

No documentary evidence of a chain of title from the original inventor(s) to assignee has been submitted, nor is the reel and frame specified as to where such evidence is recorded in the office. 37 CFR 3.73(b). (See 1140 O.G. 72). **NOTE:** This documentary evidence or the specifying of the reel and frame may be found in the T.D. or in a separate paper submitted by applicant. (See 14.30).

No "statement" specifying that the evidentiary documents have been reviewed and that, to the best of the assignee's knowledge and belief the title is in the assignee seeking to take action. 37 CFR 3.73(b). (See 1140 O.G. 72) (See 14.31).

The T.D. is not signed. (See 14.26, 14.26.3), or 14.26.03 if TD is not signed by all the owners.

Attorney not of record in oath/decl. or a separate paper filed appointing a new or associate attorney. (See 14.29.01).

The serial number of the application (or the number of the patent) which forms the basis for the double patenting is missing or incorrect. (See 14.32).

The serial number of this application (or the number of the patent in reexam or reissue case(s) being disclaimed) is missing or incorrect. (See 14.26, 14.26.04 or 14.26.05).

The period disclaimed is incorrect or not specified. (See 14.27, 14.27.2 or 14.27.3)(For Samples 14.27.04 and 14.27.05)

Other: \_\_\_\_\_  
\_\_\_\_\_

Suggestion to request refund of \$ \_\_\_\_\_. (See 14.35, 14.36).

EXAMINER NOTE: IF APPLICATION IS IN CONDITION FOR ALLOWANCE ANY OF THE ABOVE INFORMALITIES MAY BE FAXED IN TO THE GROUP

**FOR SAMPLE TERMINAL DISCLAIMERS AND CERTIFICATES:**

Sample f a TD over a pending application and assignee Certificate (See 14.37).

Sample f a TD over a prior patent and assignee Certificate (See 14.38).

Sample Assignee Certificate under 37 CFR 3.73 (b) (See 14.39)